IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7006 OF 2007

Shri Krishna D. Ipte and ors. ..Petitioners

Vs.

M/s. Bayer India Limited ..Respondent

Mr. S.N. Deshpande for petitioners.
Mr. M.V. Gaonkar with Mr. R.N. Salgaonkar i/by M/s. Salgaonkar & Co. for respondent.

CORAM: B.H. MARLAPALLE, J.

Date : November 28, 2007.

P.C.:

1. Heard Mr.Deshpande, the learned counsel for the petitioners who were amongst the 30 complainants before the Industrial Court in Complaint (ULP) No.694 of 1999 filed under Item Nos.5, 9 and 10 of the of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The complaint has been dismissed by the learned Member of the Industrial Court both on the point of delay as well as on merits by the impugned judgment

and order dated 4/8/2007.

2. As per the complainants' own case, the employer had introduced voluntary retirement scheme on or about 2nd March 1995 and the said scheme was subsequently revised and displayed on 23/3/1995. The complainants had applied for the benefits of the said scheme on 27/3/1995 and the applications were accepted w.e.f. 1st April 1995. They were paid the benefits under the scheme. However, sometimes in the month of February 1999 they came to know that in the posts they were holding some other employees were recruited and, therefore, the employer was guilty of unfair labour practice.

. Items 5, 9 and 10 of Schedule IV of the Act read as under:-

> 5. To show favouritism or partiality to one set of workers, regardless of merits.
>
> 9. Failure to implement award, settlement

or agreement.

10. To indulge in act of force or violence.

3. On behalf of the complainants, complainant no.1 Suhas Ganpat Kalzunkar and Jaywant Baliram Pandit had stepped in the witness box, whereas on behalf of the respondent-company Shri Kumar Sudan, Head Industrial Relations & Corporate Services and Shri Narayan Kashinath Ponkshe, General Manager, Quality Assurance and Development were examined. It has come in the evidence before the Industrial Court that about 1200 employees were working in the establishment and a recognised Union by name Maharashtra General Kamgar Union represented the employees. The first Voluntary Retirement Scheme briefly named as "VRS-95" was launched in the year 1994-95 and a copy of the same with Marathi translation was displayed on the notice board on 2/3/1995. The applications in response to the same were required to be submitted till 23/3/1995. However, the Company decided to review the terms and

conditions of the said scheme and the amended scheme with its Marathi translation was displayed on the notice board on 23/3/1995. In response to the same, not only the 30 complainants but, in fact, in all 350 employees responded. Department-wise break up of the number of employees has come on record in the evidence of Shri Ponkshe CW-2. All these applications were accepted and the benefits arising out of the said scheme were paid to all the complainants like the others who had responded to the scheme and thus they ceased to be in the employment of the company from closing hours of 30/3/1995. The Company thereafter had launched similar schemes in the year 1999, 2001, 2002 and 2003 and in all 834 employees had opted for the VRS. At no point of time before the Complaint (ULP) No. 694/1999 was filed before the Industrial Court, any complaint was made to the company or to the competent authority raising any dispute either of unfair labour practice or illegal termination of service. Thus, the complainants approached the Industrial Court almost after four years from the receipt of benefits of the Voluntary Retirement Scheme. The terms and conditions of VRS-95 did not

indicate any element of coercion or force and it was left to the choice of the employees either to respond to the same or not to apply for it. Merely stating that after complainants had received the benefits under the VRS-95 they came to know in February 1999 that some other employees were recruited in their place, cannot find any basis for an unfair labour practice under Items 5, 9 or 10 of Schedule IV of the Act. The complaint was filed on frivolous ground nor was there any element of pleading to point out that any of the terms of the Voluntary Retirement Scheme were acted in breach by the Management. It was an oral statement made regarding certain assurances and that by itself would not be a basis for any act of unfair labour practice. There is a case where the complainants collected the benefits of the Voluntary Retirement Scheme on their own volitions and after four years approached the Industrial Court with a complaint of unfair labour practice on utterly frivolous grounds. An application for condonation of delay was filed and the learned Member of the Industrial Court is right in his finding that the complainants could not explain the delay caused

satisfactorily. Even otherwise, on merits, the complaint did not deserve any consideration, as even prima facie there is no case of unfair labour practice under items 5, 9 or 10 made out by the complainant.

4. In the circumstances, no interference is called for in the impugned order passed by the Industrial Court under the supervisory powers of this court under Article 227 of the Constitution. Hence, the petition is rejected summarily.

(B.H. Marlapalle,J.)